



CITY OF HOUSTON

INVITATION TO BID

Issued: April 29, 2016

Bid Opening:

Sealed bids, in duplicate, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, until **10:30 a.m. Thursday, May 12, 2016** bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 a.m. on that date for the purchase of:

**DEMO ASPHALT ROAD PATCHING TRUCK
FOR THE
DEPARTMENT OF PUBLIC WORKS & ENGINEERING
BID INVITATION NO. S38-N25800
NIGP: 072-09**

Buyer:

Questions regarding this solicitation package should be addressed to **Lena Farris** at **(832) 393-8729**, or e-mail to **lena.farris@houstontx.gov**.

Electronic Bidding:

In order to submit a bid for the items associated with this procurement, you must fill in the pricing information on the "PLACE BID" page.

Pre-Bid Conference:

A Pre-Bid Conference will be held for all Prospective Bidders in the Strategic Procurement Division, Concourse Level Conference Room No. 2 City Hall Basement, 901 Bagby, at **10:00 a.m. on Thursday, May 5, 2016**

All Prospective Bidders are urged to be present. It is the bidder's responsibility to ensure they have secured and thoroughly reviewed the solicitation documents prior to the Pre-Bid Conference. Any revisions to be incorporated into this solicitation document arising from discussions before, during and subsequent to the Pre-Bid Conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein.

Bidding forms, specifications, and all necessary information should be downloaded from the Internet at **<http://purchasing.houstontx.gov>** by registering and downloading this solicitation document, all updates to this solicitation document will be automatically forwarded via e-mail to all registered bidders. This information may also be obtained from the Supplier Assistance Desk, Strategic Purchasing Division, 901 Bagby, Concourse Level, Houston, Texas 77002.

The place of the bid opening may be transferred in accordance with Paragraph (b), (5) of Section 15-3 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph (b), (6) of said Section 15-3.

The City reserves the right to reject any or all bids, or to accept any bid or combination of bids deemed advantageous to it.

City Employees are prohibited from bidding on this solicitation in accordance with the Code of Ordinances, Section 15 - 1.

***CONTENTS:**

SECTION A: OFFER
SECTION B: SCOPE OF WORK/SPECIFICATIONS
SECTION C: GENERAL TERMS & CONDITIONS

***NOTE 1: Actual page numbers for each Section may change when the solicitation document is downloaded from the Internet or because of Letters of Clarification. Therefore, Bidders must read the bid document in its entirety and comply with all the requirements set forth therein.**

***NOTE 2: To be considered for award, please submit the electronic bid form and the forms listed in Section A, including the official signature page, which must be signed by a company official authorized to bind the company.**

SECTION A



FLEET FORMAL BID

**DEMO ASPHALT ROAD PATCHING TRUCKS
FOR THE
DEPARTMENT OF PUBLIC WORKS & ENGINEERING
BID INVITATION NO. S38-N25800
NIGP: 072-09**

To the Honorable Mayor
and City Council Members
of the City of Houston, Texas (the "City")

The undersigned hereby offers to furnish and deliver prepaid F.O.B. destination point Houston, Texas, the item(s) listed on the **electronic bid form** and on individual Purchase Orders, in accordance with the price(s) bid and other conditions shown herein, and in accordance with the City's Specifications and General Terms & Conditions and/or samples/drawings provided herein. When issued by the City of Houston, Letters of Clarification shall automatically become part of this bid document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of each bidder to ensure it has obtained all such Letters. By submitting a bid on this project, bidder shall be deemed to have received all Letters of Clarification and to have incorporated them into the bid.

The City may accept this bid offer by issuance of a Notice of Award Letter and/or a Purchase Order at any time on or before the 120th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 120 days after bid opening or for 90 days after City Council awards the bid, whichever comes last, but this period may be extended by written agreement of the parties.

The City reserves the option, after bids are opened, to adjust the quantities on the item(s) listed on the following page(s) upward or downward, subject to the availability of funds, and/or make award(s) on a line item basis.

The City reserves the right to INCREASE quantities during the twelve-month period following the issuance of the first purchase order(s) subject to agreement in writing by the Contractor/Supplier to honor the same bid price(s).

SECTION A

Bidding forms, specifications, and all necessary information should be downloaded from the Internet at <http://purchasing.houstontx.gov> by registering and downloading this solicitation document

Additional Required Forms to be Included with this Bid:

In addition to the electronic Bid Form and the Official Signature Page, the Forms listed in Table 1 **must be completed and submitted to the Office of the City Secretary on or before the date and time the bid is due:**

Table 1 - Required Forms
http://purchasing.houstontx.gov/forms/Affidavit_of_Ownership.doc
http://purchasing.houstontx.gov/forms/Bidders_Attachments_Fleet.doc
http://purchasing.houstontx.gov/forms/Conflict_of_Interest_Questionnaire.doc
http://purchasing.houstontx.gov/forms/Fair_Campaign_Ordinance.doc
http://purchasing.houstontx.gov/forms/Statement_of_Residency.doc
http://purchasing.houstontx.gov/forms/Early_Payment_Discount.doc

Table 2 lists other documents and forms that should be viewed/downloaded from the City's website, but are not required to be submitted with the bid. The City will request these forms, as applicable, to be completed and submitted to the City by the recommended/successful bidder:

Table 2 - Documents and Forms
http://purchasing.houstontx.gov/forms/Certificate_of_Insurance
http://purchasing.houstontx.gov/forms/Drug_Forms.doc
http://purchasing.houstontx.gov/forms/EEOC.doc
http://purchasing.houstontx.gov/forms/Equipment_Inspection_&_Receiver.doc
http://purchasing.houstontx.gov/forms/Formal_Instructions_for_Bid_Terms
http://purchasing.houstontx.gov/forms/Sample_Insurance_Endorsements

PROTESTS

- Filing a Protest
 - An interested party may file a protest on the basis that the City has failed to comply with applicable federal or state law or with City ordinances. The subject of the protest shall be limited to fraud, corruption, or illegal acts undermining the objectivity and integrity of the procurement process. A protest must be filed in accordance with the timing requirements set forth herein and must include:
 - The name, address, telephone number, and email address of the protestor.
 - The number of the solicitation.
 - Information confirming that the protestor is an interested party.
 - A written statement of the grounds for the protest and the law or ordinance alleged to have been violated. The statement shall be accompanied by relevant supporting documentation and the relief requested.
 - The signature of the protestor.
 - Protests shall be submitted to: Chief Procurement Officer, City of Houston, 901 Bagby B300, Houston, TX 77002.
- The City recognizes three types of protests:
 - Protests regarding solicitation (Pre-Submission Protest)
 - Any Pre-Submission Protest regarding a solicitation published by the City shall be filed no later than five days before the opening of bids (if a competitive bid) or due date for submittals or proposals (if an RFP/RFQ), as applicable.

SECTION A: (Continued)

PROTEST: (Continued)

- Protests regarding the evaluation or rejection of bids, qualifications, or proposals (Pre-Award Protest)
SECTION A: (Continued)
 - Any Pre-Award Protest regarding the evaluation of bids, qualifications, or proposals by the City must be filed no later than five business days prior to the City Council meeting at which the award appears on the agenda.
- Protests made after City Council's decision to award a contract (Post-Award Protest)
 - Any protest regarding the award of a contract must be submitted no later than five calendar days after the date of the award.
- Any protest received after the applicable deadline will not be considered.

NO CONTACT PERIOD:

Neither bidder(s) nor any person acting on bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Representative identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the date the City Secretary publicly posts notice of any City Council agenda containing the applicable award, aside from bidder's formal response to the solicitation, through the pre-award phase, written requests for clarification during the period officially designated for such purpose by the City Representative, neither bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder. However, nothing in this paragraph shall prevent a bidder from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action, or to a City Council committee convened to discuss a recommendation regarding the solicitation.

HIRE HOUSTON FIRST:

THIS PROCUREMENT IS SUBJECT TO THE HIRE HOUSTON FIRST PROGRAM, WHICH GIVES A PREFERENCE TO CERTAIN LOCAL BIDDERS IN AWARD OF THE PROCUREMENT. FOR MORE INFORMATION, GO TO:

<http://www.houstontx.gov/onestop/hirehoustonfirstaffidavit.pdf>

Designation as a City Business or Local Business

To be designated as a City or Local Business for the purposes of the Hire Houston First Program, as set out in Article XI of Chapter 15 of the Houston City Code, a bidder or proposer must submit the **Hire Houston First Application and Affidavit ("HHF Affidavit")** to the Director of the Office of Business Opportunity and receive notice that the submission has been approved prior to award of a contract. Bidders are encouraged to secure a designation prior to submission of a bid or proposal if at all possible.

Download the HHF Affidavit from the Office of Business Opportunities Webpage at the City of Houston e-Government Website at the following location:

<http://www.houstontx.gov/hbsc/hirehoustonfirstaffidavit.pdf>

HIRE HOUSTON FIRST

Submit the completed application forms to: Office of Business Opportunity, Houston Business Solutions Center (HBSC), 611 Walker, Level, Houston, TX 77002 or Applications may be submitted via e-mail to HoustonBSC@houstontx.gov or faxed to 832.393.0952.

Award of a Procurement of \$100,000 or More for Purchase of Goods:

THE CITY WILL AWARD THIS PROCUREMENT TO A CITY BUSINESS, AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES (THE CODE)

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

SECTION A: (Continued)

Award of Procurement under \$100,000 for Purchase of Goods:

THE CITY WILL AWARD THIS PROCUREMENT TO A +CITY BUSINESS,+AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES (~~THE CODE~~)

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN **5%** OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

Award of Procurement that may be More or Less than \$100,000 for Purchase of Goods:

THE CITY WILL AWARD THIS PROCUREMENT TO A %CITY BUSINESS,+AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES (~~THE CODE~~)

- IF THE BID OF THE CITY BUSINESS IS LESS THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN **5%** OF THE LOWEST BID RECEIVED, OR
- IF THE BID OF THE CITY BUSINESS IS MORE THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN **3%** OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

SECTION B
GENERAL SPECIFICATIONS
PART I

FOR A
DEMO ASHLAPHT ROAD PATCHING TRUCK
FOR THE
DEPARTMENT OF PUBLIC WORKS & ENGINEERING

1.0 Bidding:

- 1.1 Pricing for Specified Item(s):
 - 1.1.1 Bidders may bid on one or more of the specified items listed.
 - 1.1.2 Bids submitted must contain a unit price for the specified item(s). For any bid solicitation that contains a request for separate pricing of options for the specified item(s), pricing must be provided for both the specified item(s) and option(s) listed. If pricing is provided for only the listed option(s), the bid for that specified item will be deemed as non-responsive and will be rejected.
 - 1.1.3 The unit price for any specified item shall be defined as the price for the manufacturer's standard model, furnished complete with all standard equipment and factory installed accessories listed in the manufacturer's printed literature for the respective unit, and any additional equipment defined herein by the City of Houston that is to be included.
 - 1.1.4 In the official e-bid form, if the bidder does not intend to submit a bid for one or more of the specified items listed, bidder shall check the "No Bid" Box.
- 1.2 Pricing for Listed Option(s): (If Applicable)
 - 1.2.1 A unit price is required on every listed option for the specified item(s).
 - 1.2.2 If a bidder ~~no~~ bids+ any listed option for which bids are requested for a specified item and the option is available for the specified item(s) , the bid for that specified item will be deemed as non-responsive and will be rejected.
 - 1.2.3 In the official e-bid form, for any optional equipment requested, if the equipment that is requested is included as standard equipment by the manufacturer, or is offered by the bidder at no charge, the bidder shall check the ~~No~~ Charge+ Box, which will then indicate ~~\$~~0.00+ in the Unit Price column.
- 1.3 The City may accept this bid offer by issuance of a Notice of Award Letter and/or a Purchase Order covering award of bid to the Contractor/Supplier at any time on or before the 120th day following the day the Official Bid Form is opened by the City. This offer shall be irrevocable for 120 days after bid opening or for 90 days after City Council awards the bid, whichever comes last, but this period may be extended by written agreement of the parties.
- 1.4 Prices quoted shall remain firm through delivery and shall not be subject to increases (or supplemented on Contractor/Supplier's invoice(s) for payment).
- 1.5 The City reserves the option, after bids are opened, to adjust the quantities listed on the City's Official Bid Form upward or downward, subject to the availability of funds, and/or make award by line item. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor/Supplier enters into based on the City purchasing all the quantities specified herein.
- 1.6 The City reserves the right to INCREASE quantities during the twelve-month period following the issuance of the first purchase order subject to agreement in writing by the Contractor/Supplier to honor the same bid price. During this period, purchase orders will be issued for these items as needed. It is emphasized that the City of Houston does not guarantee any quantities; rather, the quantities may vary depending upon the actual needs of the various city departments.

2.0 Award:

- 2.1 Award will be made on the basis of the low total bid price for the specified item(s) meeting all specifications referenced herein plus listed options, if any.

SECTION B - PART I: GENERAL SPECIFICATIONS: (Continued)

3.0 Applicable Specifications:

- 3.1 The applicable specifications are comprised of the ~~%a~~Instructions for Bidding and Terms & Conditions+, "Official Bid Forms+", the ~~%G~~General Specifications", the ~~%T~~Technical Equipment Specifications", the "General Terms and Conditions" and other specifications that may be included herewith and the purchase orders which refer to these specifications.

4.0 Units Bid:

- 4.1 The unit(s) bid shall be new, manufacturer's latest make and model in current production as offered to commercial trade and shall be furnished complete with all factory-installed standard equipment and accessories listed in the manufacturer's latest literature for the respective unit and any additional optional equipment as may be defined in the detailed Technical Specifications.
- 4.2 Contractor/Supplier, by affixing their signature on the Official City Bid Form, has offered to furnish the equipment as specified herein in accordance with these specifications and all provisions set forth in this bid document. As such, it is the Contractor/Supplier's responsibility to adhere to these specifications. **Any exceptions or conditions to the specifications set forth in the bid documents will deem the bid non-responsive, and the bid will be rejected.**
- 4.3 The unit(s) bid shall be in full and complete compliance with all applicable safety and pollution requirements and regulations in effect at the time of bid submittal. This includes but is not limited to standards established by the United States Department of Transportation, including the Federal Motor Vehicle Safety Standards (FMVSS), the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), the Texas Department of Transportation and the Texas Commission on Environmental Quality (TCEQ).
- 4.4 **The City of Houston requires that the unit(s) bid be the lowest emission unit(s), i.e. Nitrogen Oxides (NOx) and Fine Particulate Matter (PM) without increasing Hydrocarbons (HC), available on the market for the specified equipment.** The emission standards established by the EPA shall be considered only as minimum standards. In the absence of EPA standards or if California Air Resources Board (CARB) standards provide lower emissions, CARB standards will be considered as the minimum if the specified unit and any required fuel is available to the City of Houston. **Federally regulated engines must be covered by an EPA-issued Certificate of Conformity certifying the engine to be in compliance with federal emission standards and the Contractor/Supplier shall provide the Certificate of Conformity with their bid or within three calendar days from the written request of the City.** EPA emission label must be affixed to the vehicle and/or engine and be readily visible.
- 4.5 The term ~~%Heavy Duty+~~, or ~~%HD+~~ as may be applied to these specifications shall be interpreted to mean that the item referred to shall exceed the usual quality, quantity or capacity of that supplied with standard production units and shall be able to withstand the unusual strain, exposure, wear and use to be expected in the intended service. Where specification requirements are given, they shall be considered minimum requirements unless otherwise indicated.
- 4.6 Throughout these specifications, compatibility is of the essence and any modification, accessory, device, material or type of construction, whether to existing or to the specified equipment, which may be necessary to incorporate the specified equipment into the existing equipment shall be considered to be a part of these specifications whether detailed by item or not.
- 4.7 Units provided shall not have any decal, plate, sign, stencil, stamping, molding, or marking of any type pertaining to advertisement other than trademarks, trade names, or model designation normally installed by the manufacturer on equipment delivered to the City of Houston. No accessory item furnished on equipment shall advertise the name of the Contractor/Supplier.

SECTION B - PART I: GENERAL SPECIFICATIONS: (Continued)

5.0 Technical Literature:

- 5.1 To evaluate the bids, the user department and the City purchasing staff may require product literature/specification sheets. Technical literature may be provided with the bid submittal but is not required. However, the City reserves the right to request and require literature and/or clarifications, as needed, after bid submittal.
- 5.2 If required, Bidder must submit a minimum of TWO SETS of the requested catalogue information, descriptive literature specifications and/or (if applicable) engineering drawings that completely identify the items bid. Bidder(s) shall furnish the requested literature within seven (7) calendar days after the receipt of the City's written request. FAILURE ON BIDDER'S PART TO FURNISH THE REQUESTED TECHNICAL DATA IN THE TIME LIMIT SPECIFIED MAY BE CAUSE FOR REJECTION OF THE BID.

6.0 Warranty:

- 6.1 **RESERVED**

7.0 Licenses and Permits:

- 7.1 Contractor/Suppliers are to adhere to all applicable federal, state as well as local laws and regulations. It is the Contractor/Supplier's responsibility to acquire all necessary licenses and permits required by law.
- 7.2 Contractor/Supplier shall be responsible for securing any and all inspections required by law, including State Inspection stickers. Any fee charged for these inspections shall be the responsibility of the Contractor/Supplier and not the City of Houston.
- 7.3 At the time of delivery to the City of Houston, Contractor/Suppliers are required to provide temporary paper license tags/plates for motor vehicles or other equipment required by the State of Texas to be registered for operation on public highways.
- 7.4 **TEXAS OCCUPATIONS CODE, TITLE 14, CHAPTER 2301** (Formerly known as ~~The Texas Motor Vehicle Commission Code~~): **(If Applicable to this Procurement)**
- 7.4.1 Section 2301.251: License Required: Generally (a) Unless a person holds a license issued under this chapter authorizing the activity, the person may not (1)engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor, converter, representative, vehicle lessor, or vehicle lease facilitator in this state.
- 7.4.2 Sec. 2301.252: License required: Sale of New Motor Vehicles:(a) A person may not engage in the business of buying, selling, or exchanging new motor vehicles unless the person: (1) holds a franchised dealer's license issued under this chapter for the make of new motor vehicle being bought, sold, or exchanged; or (2) is a bona fide employee of the holder of a franchised dealer's license.
- 7.4.3 **Licensed Franchised Dealers** submitting bids for new cabs & chassis with installed bodies and other equipment, by this Statute, are required to employ **properly licensed converters** for the conversions of the new motor vehicles.
- 7.4.4 **The Act of Submitting a Bid is regarded as doing business, as the entity is soliciting a sale.** Accordingly, each bidder must be a **licensed franchised dealer** at the time the bid is submitted.

8.0 Delivery / Inspection:

- 8.1 The item(s) specified herein, with delivery tickets and/or other required documents shall be delivered Prepaid F.O.B. Destination to the location(s) shown on the purchase order(s) **within the delivery time(s) as listed in the Technical Specifications** after receipt of City of Houston Purchase Order.
- 8.2 The Contractor/Supplier shall notify the City Contact listed in the ~~Ship To~~ section of the purchase order not less than three (3) days prior to expected delivery/arrival to permit inspection scheduling. The City Contact shall advise Contractor/Supplier as to the date, time and location of authorized delivery/location. An authorized representative of the Contractor/Supplier shall supervise delivery to the City. The City will not assume any liability for any vehicle/equipment delivered to an unauthorized location and/or any vehicle/equipment delivered but not accepted by the City.

SECTION B - PART I: GENERAL SPECIFICATIONS: (Continued)

8.0 Delivery / Inspection: (Continued)

8.3 Documentation at time of Delivery:

Contractor/Supplier shall provide the following documentation **per purchase order** upon delivery:

- Copy of purchase order(s) and invoice(s).
- Manufacturer's Certificate of Origin shall be made out to "City of Houston, Texas", 900 Bagby, Houston, TX 77002 and delivered to the Fleet Management Department representative at the time of delivery of the vehicle/equipment, if applicable.
- Temporary paper license tags/plates paperwork, if applicable for equipment being delivered.
- Warranty policy(ies) and/or certifications as may be required in the Specifications.
- Parts, service, operator and maintenance manual(s) as may be required in the Technical Specifications.

8.4 Line Tickets at time of Delivery:

8.4.1 Vehicles (If Applicable):

8.4.1.1 Line sheets/line tickets from the manufacturer of the vehicle shall be provided for each vehicle and delivered along with other City-required documents and manuals. Each line sheet/line ticket shall list all components that make up the vehicle chassis and shall include the make, model, and serial number of each component. In addition, line sheets/line tickets shall be provided for all mounted bodies specified for cabs & chassis, and shall include but not be limited to manufacturer, serial number, size, and tare weight. All mounted equipment and components shall be listed by the manufacturer, serial number, weight restrictions (lifts, booms, hydraulic arms etc) and all other relevant data that identifies the component.

8.4.2 Other Equipment (If Applicable):

8.4.2.1 Line sheets/line tickets from the manufacturer of the equipment specified shall be provided for all equipment delivered along with other City-required documents and manuals. Each line sheet/line ticket shall list all components that make up the equipment and shall include the make, model, and serial number of each component.

8.5 Weight Ticket Requirements per State of Texas Requirements for Title Transactions:

8.5.1 A weight certificate shall be required on all new commercial motor vehicles covered by the manufacturer's certificate when the carrying capacity (in accordance with the State's Tonnage Rating Guidelines) is rated in excess of one ton by the manufacturer.

8.5.2 A weight certificate shall also be required when additional equipment has been added to the new commercial motor vehicle after it was delivered by the manufacturer.

8.6 Each unit shall be delivered clean and shall be complete with all equipment operable. Each unit shall be inspected by the City before tender of delivery to determine its compliance with the specifications and/or to test its ability to perform its intended use.

8.7 Upon acceptance and receipt of the vehicle/equipment unit by the City, Contractor/Supplier shall obtain the signatures and employee numbers of the City's receiving employees on the City's Equipment Inspection/Receiver Report.

9.0 Liquidated Damages:

9.1 Under the terms of this Contract (Purchase Order), the Contractor/Supplier certifies to complete delivery of any vehicle/equipment within the specified calendar days, listed in the Delivery Section of the Technical Specifications, counting from the date the City of Houston purchase order is received by the Contractor/Supplier. Contractor/Supplier agrees that time is of the essence in performance of this Contract. The Contractor/Supplier and the City of Houston understand and agree that a breach of contract as to completion on time will cause damages to the City and that the actual damages from the harm would be difficult to estimate accurately.

SECTION B - PART 1: GENERAL SPECIFICATIONS: (Continued)

9.0 Liquidated Damages: (Continued)

Therefore, for each and every calendar day that the vehicle/equipment is not delivered and/or accepted by the City beginning sixty-one (61) calendar days after the expiration of the time limit set in the Contract, the Contractor/Supplier shall be liable for and shall pay to the City the sum of **Fifty dollars (\$50.00)** per vehicle/equipment per calendar day, or portion thereof, as liquidated damages and not as a penalty. It is further agreed that the sum stipulated as liquidated damages is a reasonable estimate of the damage that will result from a failure of the Contractor/Supplier to deliver the product/service in accordance with the Contract. The amount of the liquidated damages due may be deducted by the City from any payment or payments due to the Contractor/Supplier, or if all payments otherwise due to the Contractor/Supplier have been made, the amount of the liquidated damages shall be immediately due and payable upon demand.

- 9.2 Contractor/Supplier will not be liable for delays in performing its obligations to the extent such delays are caused by unforeseeable conditions that are beyond the Contractor/Supplier's reasonable control and directly interfere with performance, and are without Contractor/Supplier's fault or negligence (force majeure). However, Contractor/Supplier shall provide written notice to the City of the cause and extent of an **excusable delay** resulting from unforeseeable conditions. Upon cessation of the event causing the delay, Contractor/Supplier shall provide written notice to the City of the actual delay incurred. Determination of force majeure shall rest solely with the City Purchasing Agent and the receiving department

10.0 Conflict in Terms:

- 10.1 Should there be any conflict between the General Specifications and the Technical Specifications, the Technical Specifications shall prevail.

11.0 Miscellaneous:

- 11.1 For purposes of this Contract (Purchase Order), the phrase "City Purchasing Agent" shall be deemed to include both the City Purchasing Agent, and his or her designated representative(s).
- 11.2 Prospective bidders may propose "equivalent equipment" as additional item(s) for City-approved equipment listings of acceptable equipment in this bid document. Prospective bidders must submit, in writing to the City Purchasing Agent, 1) a request for approval of proposed equipment, 2) Equipment Manufacturer's literature, and 3) a detailed comparison documenting that the equipment proposed is equivalent to existing equipment in the City-approved equipment listings. The approval request and all required documentation shall be in the Office of the City Purchasing Agent no later than 14 calendar days before the bids for this Contract are scheduled to be opened and publicly read. Requests for equipment approval not received by the time specified above will not be considered for this Contract. Determination as to whether the equipment proposed is equivalent to the items in the City-approved equipment listings shall rest solely with the City Purchasing Agent.

12.0 Contractor/Supplier References (See Exhibit No. 1):

- 12.1 In order to receive bid award consideration, the bidder must be able to demonstrate that it has provided, as a contractor/supplier, products that are similar to those offered on the electronic bid form to governmental agencies or other entities within the last two years.
- 12.2 If this information is required by the City, the bidder shall provide the information on Exhibit Form No. 1 within seven (7) calendar days after receipt of the City's written request. Failure by the Bidder to furnish the requested information in the time limit specified may be cause for the rejection of the bid.

SECTION B

SPECIFICATIONS

PART II **TECHNICAL SPECIFICATIONS**

ITEM NO. 1: DEMO ASPHALT ROAD PATCHING TRUCKS

1.0 GENERAL:

1.1 Equipment Description:

- 1.1.1 This specification is for the purchase of a Demo Asphalt Road Patching Truck for the Department of Public Works & Engineering Department (herein referred to as ~~PAWE~~). The Contractor awarded this purchase shall have the experience and technical ability to provide a petroleum trailer as described herein.

Referenced Model is: BergKamp FP5 mounted on a 2008 Kentworth T Chassis

2.0 CAB & CHASSIS:

2.1 Chassis:

- 2.1.1 35,000-lb. GVWR.
- 2.1.2 Air Brakes and maximum capacity air compressor
- 2.1.3 Vertical Exhaust

2.2 Cab:

- 2.2.1 Cab to Axle dimension 126 in.

2.3 Transmission:

- 2.3.1 Allison 3000RDS, 3500RDS or 4000RDS automatic transmission
- 2.3.2 With clearance for mounting PTO gearbox
- 2.3.3 Direct mount hydraulic pump on right side of transmission

3.0 BODY:

3.1 Asphalt Hopper System

- 3.1.1 5.1 cubic yard
- 3.1.2 50° side slopes
- 3.1.3 3.0 inch of insulation sloped bottom encased in double-steel jacket
- 3.1.4 Double-layered steel encapsulating 2.0 in insulation
- 3.1.5 Two hopper heaters with 220 VAC 4 kW electric heaters
- 3.1.6 Material feed with 6 x 6 auger
- 3.1.7 Full Hopper length agitator, hydraulically-driven and reversible
- 3.1.8 Auger and agitator with controls at operator station
- 3.1.9 Material distribution chute pivots 90° for distribution of patching mix from hopper
- 3.1.10 Locking in a horizontal position for ease in shoveling patching mix and in an upward position for travel

3.2 Auger System:

- 3.2.1 Hydraulic motor drive for auger powered by 13.6 hp
- 3.2.2 Motor producing 1,100 ft-lb of torque.

3.3 Hydraulic System:

- 3.3.1 Steel 25 gallon reservoir equipped with oil level sight gauge with thermometer
- 3.3.2 Filler breather cap external, shutoff valve on hydraulic pump suction line
- 3.3.3 PTO to match chassis minimum 21 hp with on/off control in cab
- 3.3.4 Variable volume single stage piston pump direct mounted to heavy-duty clutched drive
- 3.3.5 Single speed wet spline PTO when mounted on an automatic transmission
- 3.3.6 Hoses rated to 3,000 psi.
- 3.3.7 Multi-spool control valves for hopper, auger, agitator, doors, and auxiliary tools with built in adjustable relief.
- 3.3.8 Auxiliary hydraulic circuit with quick-coupling attachment and controls at operator station.

SECTION B PART II TECHNICAL SPECIFICATIONS: (Continued)

ITEM NO. 1, DEMO ASPHALT ROAD PATCHING TRUCKS: (Continued)

3.0 BODY: (Continued):

- 3.4 Electrical System:
 - 3.4.1 On board power source is hydraulically-driven 230 VAC,
 - 3.4.2 An electric generator with voltage and amperage meters
 - 3.4.3 Power source after working hours through customer-supplied circuit
 - 3.4.4 Minimum 230 VAC, 40A
 - 3.4.5 Hopper heater includes 230 VAC thermostatic controller displaying set-point and hopper temperature
 - 3.4.6 Hopper heater electrical protection with a 40A ground fault circuit interrupter (GFCI) that trips at 5 mA for worker safety
 - 3.4.7 Tack heater and system controls protected with a 10 A breaker wired through the 40 A GFCI
- 3.5 Asphalt Emulsion System:
 - 3.5.1 80.0 gallon ASME asphalt emulsion system tank insulated with 2.0 inches of insulation
 - 3.5.2 Top Opening 6.4 inches x 8 inches for ease of fill, visual inspection of contents and tank level
 - 3.5.3 230 VAC thermostatically-controlled tank heater with 1000 W silicone
 - 3.5.4 Drum heat band located toward the tanks bottom with no direct contact with the emulsion.
 - 3.5.5 12 ft. hose spray wand for clean out of pothole and application of tack coat with dual feed of air and emulsion materials, designed so that air cleans out pothole and application from wand and hose into supply tank while stirring supply tank
 - 3.5.6 Emulsion line with on/off valve and storage on the vehicle
 - 3.5.7 Air is supplied from chassis air compressor (no effect on chassis warranty).
 - 3.5.8 The air tank is ASME-approved with bleed valve and pressure gauge mounted on machine
 - 3.5.9 Equipped with 80 psi tractor protection valve to ensure that no air may be taken from the truck system pressure is above 80 psi to provide adequate truck braking system pressure
- 3.6 Spoils Bins:
 - 3.6.1 Equipped with two spoils bins
 - 3.6.2 Rear-mount 0.51 cubic yard bin
 - 3.6.3 Side- mount 0.47 cubic yard bin
 - 3.6.4 Both with swing-open door and gravity dump
 - 3.6.5 Rear bin has a fold down door for easy loading
- 3.7 Pavement Breaker System:
 - 3.7.1 Powered by onboard hydraulic system
 - 3.7.2 67-lb pavement breaker with asphalt chisel
 - 3.7.3 25 ft. of hose with quick disconnects.
 - 3.7.4 Spring-load hose reel
 - 3.7.5 Hammer storage location provided on lift platform
- 3.8 Compactor System:
 - 3.8.1 Standard vibratory plate compactor powered by 5 hp gas engine providing 3,375 lbf of centrifugal force with a 19.5 inches x 23 inches plate size
 - 3.8.2 Compactor weighs 190-lbs and includes 15 gallons water tank with gravity feed complete with filler cap and on/off valve
 - 3.8.3 Compactor storage location provided on lift platform
- 3.9 Lift Platform:
 - 3.9.1 Hydraulically operated lift platform provides storage for Pavement Breaker System and Compactor System
 - 3.9.2 Hydraulic lowering of tools for operator safety
 - 3.9.3 Controls at rear of unit for ease of operation
- 3.10 Access Platform:
 - 3.10.1 Large 77.5 inches x 44 inches access platform constructed of heavy-duty 10 gauge steel tread platform for simple viewing of hopper and asphalt emulsion fill.
 - 3.10.2 Access to hydraulic and air tanks, oil cooler, water tank and main electrical panel

SECTION B PART II TECHNICAL SPECIFICATIONS: (Continued)

ITEM NO. 1: DEMO ASPHALT ROAD PATCHING TRUCKS: (Continued)

3.0 BODY: (Continued):

- 3.11 Operator Controls:
 - 3.11.1 Hopper doors are controlled with manual valve front hopper
 - 3.11.2 Wall accessible from curbside ground level
 - 3.11.3 Operator control station located at rear of hopper with controls for agitator, front and rear auger motors, auxiliary tools, lift platform and optional swing auger
- 3.12 Side tool/ Storage Box:
 - 3.12.1 Lockable 108 inches x 23 inches tool storage box with full-length
 - 3.12.2 Tall door opening constructed of heavy-gauge steel, with full-length hinge
 - 3.12.3 Two adjustable keyed hand latches
- 3.13 Safety Lighting System:
 - 3.13.1 Flashing amber 12 VDC strobe light
 - 3.13.2 Directional arrow board with 12 VDC system
 - 3.13.3 In-cab controls for on/off, left arrow, right arrow, both arrows and flash bar patterns
 - 3.13.4 Audible Electronic back-up alarm

4.0 WARRANTY:

- 4.1 **AS IS NO WARRANTY**

5.0 LITERATURE:

- 5.1 To provide three (3) copies of demo asphalt road patching truck CDs or online manuals.

6.0 DELIVERY:

- 6.1 The demo asphalt road patching truck trailer unit(s) specified above, with delivery tickets and/or other required documents shall be delivered prepaid free on board (F.O.B.) destination to the Fleet Management Department facility located at 901 Bagby, Houston, Texas **within thirty** calendar days after receipt of the City of Houston purchase order.
- 6.2 Manufacturer or the dealer will provide temporary licenses (~~paper plates~~) to the purchaser at the time of delivery of the equipment

SECTION C

GENERAL TERMS AND CONDITIONS

FOR A DEMO ASHLAPHT ROAD PATCHING TRUCK FOR THE DEPARTMENT OF PUBLIC WORKS & ENGINEERING

1.0 COMPETITIVE BIDDING:

- 1.1 It is the intent of the City of Houston to solicit the lowest and best responsible bid or price under competitive conditions. All materials and/or equipment shall be new unless stated otherwise. Prospective bidders are advised that the specifications within this bid invitation are not to be considered restricted to any referenced manufacturer.

2.0 AWARD:

- 2.1 The City reserves the right to consider and make awards of bids on articles of similar nature that will in all respects serve the purpose for which the purchase is being made. The City reserves the right to be the sole judge as to whether such articles will serve the purpose.
- 2.2 Unless otherwise specified, the City reserves the right to accept or reject in whole or in part any bid submitted or to waive any informalities that are in the best interests of the City.

3.0 CONDITIONS PART OF BID:

- 3.1 In the event of any conflict, the terms and provisions incorporated in the bid specifications shall control over the terms and provisions of the General Terms & Conditions for any or all purposes. Otherwise, all the terms and provisions appearing within the General Terms & Conditions shall be given full effect and shall be construed in harmony to the maximum extent by the parties hereto.
- 3.2 The failure of the City to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Contract (Purchase Order), General Terms & Conditions or Specifications shall not be construed as a waiver or relinquishment of the future performance of such term, covenant or condition by the City, but the obligation of the Contractor/Supplier with respect to such future performance shall continue in full force and effect.

4.0 SHIPPING TERMS:

- 4.1 Prices shall be prepaid F.O.B. destination to the delivery locations, Houston, TX, as indicated on individual City of Houston purchase orders. Contractor/Supplier shall retain title and control of all goods until they are delivered and the contract of coverage (Purchase Order) has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor/Supplier. All claims for visible or concealed damage shall be filed by the Contractor/Supplier. The City will notify the Contractor/Supplier promptly of any damaged goods and shall assist the Contractor/Supplier in arranging for inspection.

5.0 SILENCE OF SPECIFICATIONS:

- 5.1 The apparent silence of these specifications as to any detail or the apparent omission from them of a detailed description concerning any point shall be regarded as meaning that only the best commercial practice shall prevail and only materials and workmanship of first quality are acceptable. All interpretations of these specifications shall be made upon the basis of this statement.

6.0 SPECIFIED EQUIPMENT, OR EQUIVALENT:

- 6.1 Wherever in the specifications any materials or processes are indicated or specified by patent of proprietary name and/or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating descriptions of the performance, materials and/or processes desired and shall be deemed to be followed by the words, "or equivalent", if not so stated in the specifications herein.
- 6.2 The burden of proof shall rest with the bidder, in the course of a technical evaluation, to prove that the proposed item(s) are equivalent to the performance, materials, processes, or articles specified. **DETERMINATION AS TO WHETHER THE ITEM(S) BID IS(ARE) EQUIVALENT TO THOSE SPECIFIED SHALL REST SOLELY WITH THE CITY PURCHASING AGENT AND THE RECEIVING DEPARTMENT.**

GENERAL TERMS & CONDITIONS: (Continued)

7.0 BRAND NAMES:

- 7.1 Any manufacturer's names, trade names, brand names, or catalog numbers used in the specifications are for the purpose of describing and establishing the general quality level, design and performance desired. Such references are not intended to limit or restrict bidding by other Contractor/Suppliers, but are intended to approximate the quality design or performance that is desired. Any bid that proposes like quality, design or performance, will be considered. Equivalent products will be considered, provided a complete description and product literature is provided. Unless a specific substitution is made, the assumption will be that the item bid is exactly as specified on the Invitation to Bid.

8.0 PATENTS:

- 8.1 THE CONTRACTOR/SUPPLIER AGREES TO INDEMNIFY AND SAVE HARMLESS THE CITY, ITS AGENTS EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE %CITY+) FROM ALL SUITS AND ACTIONS OF EVERY NATURE AND DESCRIPTION BROUGHT AGAINST THEM OR ANY OF THEM, FOR OR ON ACCOUNT OF THE USE OF PATENTED APPLIANCES, PRODUCTS OR PROCESSES, AND IT SHALL PAY ALL ROYALTIES AND CHARGES WHICH ARE LEGAL AND EQUITABLE. EVIDENCE OF SUCH PAYMENT OR SATISFACTION SHALL BE SUBMITTED, UPON REQUEST OF THE CITY PURCHASING AGENT, AS A NECESSARY REQUIREMENT IN CONNECTION WITH THE FINAL ESTIMATE FOR PAYMENT IN WHICH SUCH PATENTED APPLIANCE, PRODUCTS OR PROCESSES ARE USED.

9.0 RELEASE:

- 9.1 CONTRACTOR/SUPPLIER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE %CITY+) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

10.0 INDEMNIFICATION:

- 10.1 CONTRACTOR/SUPPLIER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE %CITY+) HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:
- (1) CONTRACTOR/SUPPLIER AND/OR ITS AGENTS' EMPLOYEES' OFFICERS' DIRECTORS' CONTRACTORS' OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR/SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
 - (2) THE CITY AND CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND
 - (3) THE CITY AND CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT.
- 10.2 CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR/SUPPLIER'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR/SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

GENERAL TERMS & CONDITIONS: (Continued)

10.0 INDEMNIFICATION: (Continued)

10.3 INDEMNIFICATION PROCEDURES:

(1) Notice of Claims. If the City or Contractor/Supplier receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor/Supplier must advise the City as to whether or not it will defend the claim. If Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor/Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor/Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

11.0 INSURANCE: (See Exhibit No. 2, Pre-Approved Certificate of Insurance)

11.1 Prior to award and/or starting work, Contractor/Supplier must present a Certificate of Insurance evidencing the insurance coverage specified herein. This is a mandatory requirement. Only unaltered, original insurance certificates are acceptable. Photocopies are unacceptable.

*Exception: Proof of insurance coverage is not required by Contractor/Supplier if the specified equipment will be dropped-shipped by manufacturer, or delivered by a common carrier, and this contract agreement (Purchase Order) does not require Contractor/Supplier to perform a labor or service component at a City facility. Prior to award, Contractor/Supplier must present a written statement attesting to this exception.

11.2 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

11.0 INSURANCE: (Continued)

11.2.1 Commercial General Liability insurance including Contractual Liability insurance: \$500,000 per occurrence; \$1,000,000 aggregate

11.2.3 Automobile Liability insurance:
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period unless otherwise indicated.

11.3 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City. The Contractor shall give 30-day written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may:

11.3.2 Purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

11.3.4 For pre-approved endorsement forms, see Exhibit No. 2 or proceed to Business Forms, Sample Certificate of Insurance at <http://purchasing.houstontx.gov/forms.shtml>

12.0 WORKER'S COMPENSATION INSURANCE:

13.0 DRUG DETECTION AND DETERRENCE PROCEDURE: (See Online Forms)

Page 17 of 22

GENERAL TERMS & CONDITIONS: (Continued)

13.0 DRUG DETECTION AND DETERRENCE PROCEDURE (Continued):

- 13.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("COD"):
- 13.2.1 a copy of its drug-free workplace policy,
 - 13.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in %Table 2 . Documents and Forms", together with a written designation of all safety impact positions, and
 - 13.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in %Table 2 . Documents and Forms."
- 13.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G." Contractor shall submit the Drug Policy Compliance Declaration to the COD within 30 days of the expiration of each 6-month period of performance, and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed, or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 13.4 Contractor also shall file updated designations of safety impact positions with the COD if additional safety impact positions are added to Contractor's employee workforce.
- 13.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

14.0 MINORITY AND WOMEN BUSINESS ENTERPRISES:

- 14.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 0% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities (%OBO+) and will comply with them.

15.0 REJECTIONS:

- 15.1 Articles not in accordance with samples and specifications must be removed by the Contractor/Supplier and at his expense. All disputes concerning quality of supplies delivered under this offer will be determined by the City Purchasing Agent or designated representative.
- 15.2 All articles enumerated in the offer shall be subject to inspection on delivery by an officer designated for the purpose and if found inferior to the quality called for, or not equal in value to the Department's samples, or deficient in weight, measurements, workmanship or otherwise, this fact shall be certified to the City Purchasing Agent who shall have the right to reject the whole or any part of the same.

16.0 FORCE MAJEURE:

- 16.1 Timely performance by both parties is essential to the award. However, neither party is liable for delays or other failures to perform its obligations to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- 16.2 This relief is not applicable unless the affected party does the following:
- 16.2.1 uses due diligence to remove the Force Majeure as quickly as possible; and
 - 16.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.
- 16.3 The City may perform or solicit functions itself during periods of Force Majeure. Such performance does not constitute a default or breach of this award by the City.
- 16.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may terminate this award by giving 30 days' written notice to Supplier. This termination is not a default or breach. SUPPLIER WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE AT THE TIME OF THE TERMINATION.

GENERAL TERMS & CONDITIONS: (Continued)

17.0 TAXES:

- 17.1 The City is exempt from the Federal Excise and Transportation Tax, and the limited Sales and Use Tax. Unless the Bid Form or Specifications specifically indicate otherwise, the bid price must be net exclusive of above-mentioned taxes. A Contractor/Supplier desiring refunds of, or exemptions from, taxes paid on merchandise accepted by the City, must submit the proper forms, and the City Purchasing Agent, if satisfied as to the facts, may approve or issue the necessary certificates.

18.0 INVOICING:

- 18.1 In order to expedite payments all invoices must be submitted in triplicate, itemized as to quantity, part and/or model number, description in the same order and form as in the City of Houston Purchase Order. Variations will only delay payment. In addition, invoices must show the name of the Department, Division or Section to which the merchandise was delivered, and the City of Houston Purchase Order Number.
- 18.2 All delivery tickets must have a description of the item delivered.
- 18.3 Mail invoices and a copy of the signed City of Houston Equipment/Receiver Report to the Accounts Payable Section of the Department and to the address, as noted on individual purchase orders.
- 18.4 Delivery tickets and packing slips will contain the same information as the invoice.
- 18.5 The City of Houston Equipment/Receiver Report must be signed by the receiving employee with their City Employee Number and must be signed by Contractor/Supplier Representative.

19.0 PAYMENT:

- 19.1 The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (TX. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from vendor as follows:
- Payment Time - 10 Days: 2% Discount
 - Payment Time - 20 Days: 1% Discount
- 19.2 If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following business day.

20.0 PAYMENT OF SUBCONTRACTORS:

- 20.1 Supplier shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of this award. **SUPPLIER SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF SUPPLIER'S FAILURE TO MAKE THESE PAYMENTS.**

21.0 INSPECTIONS AND AUDITS:

- 21.1 The City reserves all rights to review all payments made to Suppliers by auditing at a later date. Subject to such audit, any overpayments may be recovered from the Supplier.
- 21.2 Representatives of the City have the right to examine the books of all subcontractors and/or suppliers supplying goods and/or services under the prime award insofar as those books and records relate to performance under the prime award.
- 21.3 City representatives may have the right to perform, or have performed, (1) audits of Supplier's books and records, and (2) inspections of all places where work is undertaken in connection with this award. Supplier shall keep its books and records available for this purpose for at least three years after this award terminates. This provision does not affect the applicable statute of limitations.

22.0 CONTRACTOR DEBT:

- 22.1 If Contractor/Supplier, at any time during the term of this agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Contractor/Supplier has incurred a debt, the City Controller shall immediately notify Contractor/Supplier in writing. If Contractor/Supplier does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Contractor/Supplier under this agreement, and Contractor/Supplier waives any recourse therefor.

GENERAL TERMS & CONDITIONS: (Continued)

23.0 SUCCESSORS & ASSIGNS:

- 23.1 Contractor/Supplier may not assign this (Purchase Order) or dispose of substantially all of its assets without the written consent of the City Purchasing Agent. Contractor/Suppliers failure to obtain such consent shall be an event of default, authorizing the Purchasing Agent to terminate this contract (Purchase Order) according to its terms.

24.0 CONTAMINATED MATERIALS:

- 24.1 Each Supplier shall be required to identify their source of supply. No material will be accepted from a hazardous or toxic waste site, regardless of whether the site has been identified by either a Local, State or Federal Agency. No contaminated, toxic, hazardous waste products or heavy metal product shall be contained in these deliveries. If any material supplied to the City is found to be contaminated or contain heavy metal products, it will be the responsibility of the Supplier to remove and replace the contaminated product at their expense and at no cost to the City. The City has the option to solicit the removal of any contaminated material and charge back the Supplier any and all costs involved.

25.0 CHANGE ORDERS:

- 25.1 At any time during the Agreement Term, the City Purchasing Agent, or designated representative, may issue a change order to increase or decrease the scope of services, or change plans and specifications, as may be necessary to accomplish the general purposes of this Agreement. Contractor/Supplier shall furnish the services or deliverables in the change order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the additional work.

- 25.2 Contractor/Supplier shall not make any changes to the specifications contained herein without written authorization from the City Purchasing Agent or designated representative.

25.2.1 The City may refuse to accept all or part of the work performed or equipment/supplies delivered if changes are made to the specifications without the written authorization of the City Purchasing Agent or designated representative. The City shall not be responsible for costs incurred by the Contractor/Supplier on unauthorized change orders.

25.2.2 A letter with supporting documentation of the requested change(s) shall be submitted to the City Purchasing Agent, and the City Purchasing Agent must approve any requested changes by written authorization PRIOR TO ANY CHANGES BEING PERFORMED. Documentation acceptable to the City Purchasing Agent as evidence of Contractor/Supplier's change(s) shall reference the City's bid specification by section(s) and page number(s). The face of the envelope containing this letter shall clearly state "CHANGE ORDER REQUEST". The letter shall reference the CITY BID INVITATION NUMBER, EQUIPMENT DESCRIPTION and CITY PURCHASE ORDER NUMBER(S). Failure to provide clear and concise evidence as stated above and in the format requested will result in denial until Contractor/Supplier complies with these provisions. Documentation shall be mailed to:

City Purchasing Agent
City of Houston, Administration & Regulatory Affairs Department
Strategic Purchasing Division
P. O. Box 1562
Houston, TX 77251-1562

- 25.3 The City Purchasing Agent, or designated representative, may issue change orders, subject to the following limitations:

25.3.1 City Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of \$50,000 or less. A change order of more than \$50,000 over the approved contract (Purchase Order) amount must be approved by the City Council.

25.3.2 The total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

25.3.3 For any items described in a Change Order that the Contractor/Supplier is otherwise required to provide under the Original Agreement, the City is not obligated to pay additional money to Contractor/Supplier.

GENERAL TERMS & CONDITIONS: (Continued)

26.0 TERMINATION OF AGREEMENT:

26.1 By the City for Convenience:

26.1.1 The City Purchasing Agent may terminate this Contract (Purchase Order) at any time upon 30 calendar days notice in writing to the Contractor/Supplier. Upon receipt of such notice, Contractor/Supplier shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Contract (Purchase Order) and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Contract (Purchase Order). As soon as practicable after the receipt of notice of termination, the Contractor/Supplier shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under this Contract (Purchase Order) to date of termination. The City agrees to compensate the Contractor/Supplier for that portion of the prescribed charges for which the services were actually performed or items delivered under this Contract (Purchase Order) and not previously paid.

26.2 By the City for Default by Contractor/Supplier:

26.2.1 In the event that the materials and/or services furnished by the Contractor/Supplier do not conform to the standard set forth herein, or if the deliveries and servicing of this Contract (Purchase Order) do not conform to the requirements detailed herein, the City through a written notice from the Purchasing Agent to the Contractor/Supplier describing such default may as its options:

- (1) Terminate the Contract (Purchase Order) for default and the City shall have no further obligation under the Contract (Purchase Order).
- (2) Allow the Contractor/Supplier to cure default within 30 calendar days from receipt of notice unless the City Purchasing Agent specifies a longer period of time in the notice. The City, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, Contractor/Supplier cures such default to the City's satisfaction, then the proposed termination shall be ineffective. If Contractor/Supplier fails to cure such default prior to the proposed date of termination, then the City may terminate its performance under this Contract (Purchase Order) as of such date and have no further obligation under the Contract (Purchase Order).

26.2.2 In the event of failure to deliver any or all of the items or to perform required services, the City may cover its loss by reasonably procuring from another source the items not delivered or the services not performed. Contractor/Supplier shall be responsible for, and shall pay to the City immediately upon demand, the difference in price between that offered by the Contractor/Supplier and that which the City was forced to pay for covering Contractor/Supplier's failure to deliver or perform services.

26.3 By the Contractor/Supplier for Default by City:

26.3.1 Default by the City shall occur if the City fails to perform or observe the terms and conditions of this Contract (Purchase Order) required to be performed or observed by the City, and the Contractor/Supplier gives notice in writing to the City of the act or omission claimed by the Contractor/Supplier to constitute default on the part of the City.

26.3.2 Upon receipt of such notice in writing from the Contractor/Supplier; however, the City shall have 30 calendar days to cure such default. The Contractor/Supplier, at its sole option, may extend the proposed date of termination to a later date.

26.3.3 If City cures such default prior to the proposed date of termination, the proposed termination shall be ineffective. If the City fails to cure such default prior to the proposed date of termination, then the Contractor/Supplier may terminate its performance under this Contract (Purchase Order) as of such date.

27.0 INTERLOCAL AGREEMENTS:

27.1 Under the same terms and conditionals, this Contract may be expanded to other government entities through interlocal agreements between the City of Houston and the respective government entity that encompass all or part of the products/services provided under this contract. Separate contracts may be drawn to reflect the needs of each participating entity.

EXHIBIT NO. 1

CONTRACTOR/SUPPLIER REFERENCES

In order to receive bid award consideration, the bidder must be able to demonstrate that it has provided, as a contractor/supplier, products that are similar to those offered on the electronic bid form to governmental agencies or other entities within the last two years. The references should be listed in the space provided below. Please attach additional pages as necessary. If references are not included with the bid, the bidder shall be required to provide such references to the City of Houston within five working days from receipt of a written request from the City of Houston to do so. **Bidder's capability and experience shall be a factor in determining the Contractor's responsibility.** The City of Houston reserves the right to determine if such products are appropriately similar to those offered.

1. Entity Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____

2. Entity Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____

3. Entity Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____

4. Entity Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____

5. Entity Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____